

EXHIBIT A

LE

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 CLIFTON GIBBON,

PLAINTIFF,

5 -against-

Case No:
07 CV 6698

7 CITY OF NEW YORK,

8 DEFENDANT.

10 DATE: January 8, 2008

11 TIME: 10:26 a.m.

14 EXAMINATION BEFORE TRIAL of the Plaintiff,

15 CLIFTON GIBBON, taken by the Defendant, pursuant to a Notice
16 and to the Federal Rules of Civil Procedure, held at the
17 offices of Special Federal Litigation, New York City Law
18 Department, 100 Church Street, New York, New York 10007-2601,
19 before Shawn McCline, a Notary Public of the State of New
20 York.

1 A P P E A R A N C E S:

2

3 SCHWARTZ, LICHTEN & BRIGHT, P.C.
4 Attorneys for the Plaintiff
5 275 Seventh Avenue, 17th Floor
6 New York, New York 10001
7 BY: STUART LICHTEN, ESQ.
8 (212) 228-6320

6

7

8 MICHAEL A. CARDOZO, ESQ.
9 CORPORATION COUNSEL
10 NEW YORK CITY LAW DEPARTMENT
11 Attorney for the Defendant
12 100 Church Street
13 New York, New York 10007-2601
14 BY: JASON FRIEDMAN, ESQ.
15 File #: 2007-022840
16 Control #: DDD00713

12

13

14 ALSO PRESENT:
15 Andrez Carberry, Esq., Assistant Corporation Counsel

15

16

17

* * *

18

19

20

21

22

23

24

25

C. Gibbon

1 A. The last unemployment I got was in 2005 when I get
2 laid off.

3 Q. When you got laid off from where?

4 A. From DOT.

5 Q. How long did you receive those benefits?

6 A. For three months.

7 Q. Now, before 2005, did you receive unemployment
8 benefits?

9 A. Yes. In 2004, also, I was with DOT. I was a
10 seasonal there. I just work for nine months. I work for
11 nine months and we get laid off for three, right. So
12 whenever we get laid off they set it up, the City set it up
13 that we collect the unemployment, right.

14 You can let them take the tax out of the
15 unemployment or you can collect all the unemployment which is
16 \$405, right. And if you don't make them take the tax, at the
17 end of the year when you file your tax, you've got to file
18 that, you understand. So I got the unemployment 2005, 2004,
19 2003, 2002, 2001 because I've been with DOT now for five
20 years.

21 Q. Before working for DOT, did you receive
22 unemployment?

23 A. No. No.

24 Q. Have you ever received disability compensation from
25 the government?

C. Gibbon

1 because, you know, some people, you have some contractor, you
2 go to do the job for them, right, they know that that job
3 will cost \$100 to do, they want to pay you 25, you know,
4 after they take the other 75 for themselves, you understand,
5 so you've got to know, you know.

6 But anything in the construction field, within that
7 field, and I can get it, I'll do it because right now I'm not
8 working.

9 Q. Did you do that type of work when you worked for
10 DOT?

11 A. No.

12 Q. What kind of work did you do?

13 A. For DOT, I do -- you mean the work that I do for
14 DOT?

15 Q. When you were a seasonal road worker, what kind of
16 work did you do?

17 A. Well, I do guardrail, bulking. You see the garbage
18 trucks, right. We go on the highway because we work
19 definitely on the highway. You ever pass on the highway and
20 see some big black bags on the shoulder of the road, we just
21 drive the truck down that highway and pick up all the bags,
22 or if you see any debris that would let the highway look, you
23 know, untidy, we just clean it up.

24 Q. Did you drive the truck?

25 A. Yes, I have a CDL license, a B license.

C. Gibbon

1 guy name Masboo, we work as a team, as a partner. He was my
2 partner, you know. And they say we work very good with the
3 trimmings and things. It's we pull the trimming team. In
4 other words, we get the job done every season, you know. So
5 most of the time they put me and Masboo on it because the
6 tractor cannot cut and leave us too far, you understand, you
7 know.

8 Q. So as a seasonal worker, you start working at what
9 month of the year?

10 A. March.

11 Q. Until when?

12 A. Until maybe when the season finish in December.
13 Maybe they finish either about the 13th of December or the
14 14th or 15th because if the season finish the 15th of
15 December this year, maybe last year it will finish about the
16 13th, so within December you don't have the date.

17 Q. So from March until December?

18 A. Yes.

19 Q. When you would start work, you would have to be
20 rehired, how does that work?

21 A. No. Well, as a seasonal, right, you've got to go
22 take your drug test. The same test that I went and take, the
23 test you go and take, the drug test.

24 Q. And you did that in 2001, 2002?

25 A. Every year, come right up to the five years, every

C. Gibbon

1 year I've been doing it, right. And then you pass the drug
2 test. You get back a negative response from the drug test
3 that mean you're clean, you don't have any drug in your
4 system. They give you -- they write a paper to take back to
5 your yard, the yard that you're working in, that is the okay
6 for you to start work. You take that paper to the DS, that
7 is district superintendent that is in that yard.

8 Q. Did you in any of those previous years, did you
9 have a problem urinating for the drug test?

10 A. No, this problem hit me right in 2005. At the
11 ending of 2005, you know, they just call you randomly, you
12 know, they just, if you go work, you don't know you're going
13 to take a drug test.

14 Q. It's a random test?

15 A. You're just in the field, they call you and say
16 come, you're going downtown. I say. What am I going
17 downtown for? They say drug test. You just left and you
18 just go in and take the drug test and that's it.

19 Q. So there was no appointment?

20 A. No, you don't have no appointment. They call you
21 randomly, man. They just pick you up out of the field and
22 take you and test you, bam. That is the way they are. In
23 the morning, you might go to the yard in the morning, when
24 you look you see the drugs van or the drugs car or, you know,
25 what the people them in, the people -- them who come to test

C. Gibbon

1 you for drugs. You see them transportation in the yard.

2 Then you know that they come to check this yard.

3 Now, when they come they have a list of names, they
4 just don't check everybody in the yard, then have a list of
5 name them write down and then just call, you know, just check
6 them. If your name is on the list, you get tested.

7 Q. So you did the random test in February because?

8 A. No.

9 Q. Explain when the test was?

10 A. When they find out about the prostate?

11 Q. No, this drug test to become a seasonal road
12 worker?

13 A. Well, the random test, at first, the drug van used
14 to come in the yard, right. When the drug van come, the
15 people them on that van, then have a list with the name of
16 the people them going to check, right. When the drug van
17 come to the yard, they don't check everybody. They come with
18 a list. If your name is on the list, you get tested, right.

19 Q. But is this the test to get hired to be a road
20 worker or is this a test that happens during your working?

21 A. During your working time.

22 Q. Now, during the test to become a road worker to be
23 hired before you start working, is that random?

24 A. No, that test is a must.

25 Q. That test is the same every year?

C. Gibbon

1 A. Every year.

2 Q. Now, for the test in 2006, when was that test that
3 you had a problem?

4 A. 2005.

5 Q. Did you tell them you had a problem when you first
6 got there?

7 A. No, when I went it was the girl that control the
8 test, it was Ray Sommers (phonetic), right. They say I must
9 go down to Ray, that was a sort of random testing. They just
10 call and say Clifton, go down and take the drug test, right.

11 Q. But this test, was it a pre-hire test or post-hire
12 test?

13 The test where you had the problem, that was
14 pre-hire or post-hire?

15 A. No, if I did take that test and I didn't have -- if
16 I did give them the urine and them check the urine and find
17 the urine negative, I would go straight back to work.

18 MR. FRIEDMAN: Let's take five minutes.

19 (Whereupon, a short recess was taken.)

20 (Time noted: 11:11 a.m.)

21 MR. FRIEDMAN: Back on the record.

22 (Time noted: 11:12 a.m.)

23 BY MR. FRIEDMAN:

24 Q. Now, we were talking about a drug test from
25 February of 2005, that's the test where you had a problem?

C. Gibbon

1 A. I don't see what you're talking about, man.

2 BY MR. FRIEDMAN:

3 Q. Paragraph ten, then it refers to due to
4 Mr. Gibbon's inability to provide urine specimen --

5 A. Yes, I see it now.

6 Q. -- on February 17, 2006.

7 A. Yes.

8 Q. So you see that?

9 A. Yes.

10 Q. Now, do you recall February 17, 2006, that day?

11 A. To tell the truth I take so much drug tests, you
12 know. To pinpoint it out, it's only one test I really
13 remember in my mind is when I went to take the test when my
14 prostate was swelling, that's the only one definitely I
15 remember to tell you the truth. You see, I take so much.

16 Q. Was that this test in February? When your prostate
17 was giving you --

18 When you say your prostate was giving you a
19 problem, was that during this test on February 17, 2006?

20 A. Yes, must be because I stop work 2006, it must be.

21 Q. So if you were taking a drug test in February, that
22 would be a drug test before you start working?

23 A. Yes, before.

24 Q. So it wasn't a random drug test?

25 A. No, it's the start of the season, so you've got to

C. Gibbon

1 take that test to go back on the job, yes.

2 Q. So when you showed up on February 17th, did you
3 know that your prostate was giving you problems?

4 A. Yes, I know because in 2005, December, that's where
5 I really find out that -- I didn't even know that it was my
6 prostate. I went to take that test before and I say I
7 couldn't urinate. So after I leave over there and go back to
8 the yard, I say to myself, I said something is wrong with me.

9 So I'm affiliated with HIP. My family doctor in
10 HIP. So I call HIP and I make an appointment with my
11 doctor which is Dr. Bharara. And so she give me the
12 appointment date.

13 So I leave the evening and I go to Dr. Bharara. I
14 say, doc, man, I've been through something very much
15 embarrassing with me, man. I said I have to take a drug test
16 and when I go over to the bowl to urinate, no urine can't
17 come out, me say me bowel is full with the urine.

18 Q. I'm sorry, what date was this when you -- what day
19 was this when you realized that you had this problem?

20 A. It was the last time they called me in December,
21 2005, because the season was coming to a close, right.

22 And then, now, I went to the doctor that time and
23 when the doctor check me, the doctor told me that my prostate
24 glands did start to swell, that's why the urine cannot come
25 out.

C. Gibbon

1 Q. Was that a random test in December?

2 A. Yes, that was a random test because they just
3 called me from the field.

4 Q. Now what happened, were you able to give them any
5 urine at all?

6 A. Yes, I give them urine because the time, I was the
7 second one in the office that day, and I was the last person
8 leave because the person who conduct the test name was Ray
9 Sommers, Ray stay at the office with me until I give -- I go
10 over the bowl and the urine just take time, start to trickle,
11 take time coming out, coming out, until it eventually just
12 build up and start to come out force. And I filled up the
13 container and leave it with Ray.

14 So that was the time now, I say, I never have -- I
15 never used to have those problems before, so I say there must
16 be a problem, so I said there must be something wrong with
17 me.

18 Q. That was in December of 2005?

19 A. Yes, December of 2005.

20 So now I went to the doctor, the doctor check me
21 and the doctor say, Clifton, your prostate gland started
22 swelling. I said doc, is it serious that I may have to get
23 an operation? The doctor said, no, you don't need an
24 operation, there is medication that can fix that. I feel so
25 glad and joyful because me fraid of the knife.

C. Gibbon

1 Q. This was Dr. Bharara?

2 A. My family doctor.

3 Q. You went there in December?

4 A. December 5th. I got to see that doctor practically
5 every month, we have to test my pressure, to get my
6 prescription to pick up my medication. She knows me very
7 well. So now she writes a prescription and gives me now, so I
8 go to the pharmacy and I pick up these tablets they call
9 Flomax, to carry back down the prostate to a normal size,
10 right. Well, I've been taking those tablets, when I just get
11 the tablet and take the tablets, I don't have no problem
12 urinating. I urinate normal. I feel like urinate, we just
13 go to the bathroom, boom, we no stand up in here no long
14 time.

15 But the time now when I go now to take this test
16 now in 2006, the tablet finish, right. So now we call doctor
17 -- at first Dr. Bharara tell me say Clifton when the tablets
18 is finish and if you still have the problem, I must come back
19 to her and she will send me to a specialist and that
20 specialist will get rid of that problem once and for all.

21 Q. Do you remember when they finished?

22 Do you remember when you ran out of the pills?

23 A. It was about two days, two or three days before we
24 go down in 2006 to get this drug test, so we call.

25 Q. So that would be about February 14th or 15th?

C. Gibbon

1 A. I tell you it's quite a while and I want to tell
2 you the truth, the definite truth, everything I'm telling
3 you, right. It's about two or three days before I go down to
4 take the test to go back to work, right. I realized that the
5 tablets is out.

6 So now how me get my prescription? All the while I
7 call the doctor. I never get the doctor at that time, me get
8 the doctor receptionist, right. So I tell the receptionist,
9 say, you must do me a favor, tell Dr. Bharara that me
10 tablets, me Flomax tablets is finish and I'm going again for
11 a drug test and I don't want me have a problem urinating or
12 anything like that, so please tell Dr. Bharara. The guy in
13 front say all right, him tell Dr. Bharara, right, but
14 Dr. Bharara never call me back.

15 Q. So during those two to three days, you know, you
16 ran out of the pills; but before your drug test, were you
17 having problems urinating at home?

18 A. No. When I'm talking the pill, everything was all
19 right.

20 Q. After you stopped taking the pills -- you said you
21 ran out of the pills two or three days before the drug test?

22 A. Yes, I notice, you see when I go into the bathroom
23 when I didn't have the pill, I go into the bathroom and just
24 ready, I gone, but when I run out of the pill --

25 Q. What do you mean, describe it?

C. Gibbon

1 A. You is a man, right? You is a male, right? You go
2 into the bathroom, you pull down your zip, you take out your
3 private, you put it over the bowl, you come, you pee, right
4 out. But when the tablets run out, that's why I call her,
5 when me go in and go now to the bowl to pee, me have to stand
6 up maybe four, five minutes before the urine come out, you
7 know.

8 And the longer I don't take the tablets, the longer
9 the urine take to come out, you know. So that's the reason
10 why me call Dr. Bharara now to give me the prescription to
11 get the tablets because what I was planning to do, you know,
12 after I get that set of tablets, right, and I go back to
13 work, I was going to go back to Dr. Bharara and tell her say,
14 doc, it seem like the prostate problem is still there. So as
15 you say, you're going to refer me to a specialist, more than
16 likely send me to the specialist now for me to get rid of
17 that problem once and for all.

18 Q. How many times did you call Dr. Bharara to get the
19 medicine, do you remember?

20 A. Me call her one time, man, one time because it's
21 the first the medication run out. Me call her one time but
22 she never respond to the call, right. She never -- me never
23 hear back from her until when the City send me to Westbury to
24 them doctor to check me. What really wrong with me. When I
25 was on my way back over now, my phone ring, when I pick it up

C. Gibbon

1 it was Dr. Bharara. So me say, doc, me tablets run out and
2 me tell -- I think the receptionist, I think the guy's name
3 Marcus or something like that.

4 Q. Before we get that far, on February 17th when you
5 went for the test, do you remember what time the test was,
6 during the day, was it the early in the morning, was it in
7 the afternoon?

8 A. I think it was from 12; from about 11 to 1. I
9 think it was about that, from 11 to 1 at 40 Worth Street.

10 Q. Before you got to the test, were you at home?

11 A. Yes, I leave my home and go straight.

12 Q. Were you able to urinate before you got to the
13 test?

14 A. Well, tell you, the morning when me wake up, right,
15 and me see I was having problem, you know, to start to
16 urinate. You know, when you wake up in the morning you go to
17 the bathroom, you make a leak before the day, right. That
18 morning I get up, man, I never -- me feel like me want to
19 urinate but me go to the bowl but me never really urinate, me
20 sore of hold it in. That mean when I go down 40 Worth Street
21 to take the test, true me have the whole heap of urine in me
22 and me go, the urine just come out and me just give them the
23 urine and that would be it because me never worry about the
24 drug test because I don't deal with drugs, you understand.

25 So only thing they can find in that urine is the

C. Gibbon

1 pressure tablets or something like that, that's all them can
2 find in the urine, so I never worry about it, so the morning
3 me never urinate at home.

4 Q. You did or you did not?

5 A. No, me never urinate at home, me keep it in me.

6 Q. So when you got to the test, did you tell the
7 person running the test that you were having problems?

8 A. Yes, Ray Sommers, when I went in the first time --

9 Q. What do you mean the first time?

10 A. I went in about four times down at 40 Worth Street.
11 The first time when I went in --

12 Q. On that same day?

13 A. On that same day. The first time when I went in
14 and I tried to, you know, to let the urine come out, you
15 know, you alone, don't go in the men's room, a man walk with
16 you, go in there, right. And them time you, them must be
17 give you two or three minutes, I don't remember the direct
18 time, and the guy tell me say your time up. Man, we would go
19 out, back, try again. So when we come out of the bathroom
20 now, Ray Sommers --

21 Q. So the first time you went in, you weren't able to
22 go?

23 A. No, but at the same time my bowel full with the
24 urine, you know, it come like down there going tear out, you
25 know, so me come out back, me say, Ray was at her desk

C. Gibbon

1 because she supervisor the drug test. Ray is a girl like
2 this, me talk to Ray good, we know each other on the job. Me
3 say Ray, it seem like me have the same problem, you know,
4 like the last drug test what I take with you because the same
5 way me go in there now, Ray, me bowel full with the urine and
6 the urine nah come out. Ray say, all right, go try again,
7 and that day I make about four try. They have some little
8 bottle of water about this high, you know, this long, you
9 know.

10 Q. You came out with water, this much water?

11 A. No, the City, at the city them have water.

12 Q. They gave you water?

13 A. Yes, they gave you water there, you know, a bottle
14 about this high, long (indicating).

15 MR. CARBERRY: That about half a litter?

16 BY MR. FRIEDMAN:

17 A. About that, you know.

18 Q. How much would you say, is that a cup, more than a
19 cup, two cups?

20 A. If it's not a cup, it's little bit more than a cup.
21 So me drink -- when I go in the first time and the urine
22 don't come out. Me drink it, me drink because, you know,
23 that will sort of bill up the urine enough to come out.

24 Go back the second time, the urine nah come. Me
25 drink it again, the urine nah come.

C. Gibbon

1 Go back the fourth time, the last time now me drink
2 it and me stand up in the place, just build, want the urine
3 to come out.

4 Q. How long were you there?

5 How long were you waiting --

6 So after you tried the first time?

7 A. Yes.

8 Q. Nothing happen?

9 A. Nothing happened.

10 Q. They said here is some water, wait?

11 A. Yes.

12 Q. How long did they give you to wait?

13 A. It depends on me, right. It depends on me. Say,
14 whenever me feel like I want to go, they say all right,
15 whenever you want to go, go back in the men's room. So my
16 bowel is full with urine, right, and me feel like me want to
17 go again. So me go. Me say, look, let's go and try it
18 again, right. We go back in the men's room. The guy come
19 with me, check, him watch. Him say well, all right, Clifton,
20 your time up again.

21 We go and go until the fourth time now, we drink
22 another bottle of the water, me go in and me wait, wait,
23 wait. Even the guy who come with me, he even give me extra
24 time, you know, say it's a three-minute thing, he would give
25 me four. And him say, you know, come. Me say to Ray, the

C. Gibbon

1 same problem me have like the last time me come, you know.
2 Me say Ray, me check me doctor and me doctor say my prostate
3 problem, it started swelling. When it swell, it block the
4 passage for the urine to come out and that is it, right. Ray
5 say, I don't know what to tell you. You know what, Clifton,
6 I'm going to send you to our -- the DOT doctor. I say Ray, I
7 would do anything because I know it's my prostate because my
8 doctor, Dr. Bharara, tell me that before, right, so.

9 Q. When did this person tell you this?

10 A. Who?

11 Q. Who told you to go to the DOT doctor, that you had
12 to go to the DOT doctor?

13 A. It's Ray -- no, Ray say come, Clifton, I'm going to
14 take you to somebody else. She take me to this other woman,
15 Anna Budd (phonetic).

16 Q. I'm just trying to understand what the time frame
17 was, was this how many hours after you first got there to 40
18 Worth Street?

19 A. I see Anna Budd?

20 Q. Yes.

21 A. It's after they say the time frame for the test was
22 from 11 until 1. After I wait out that time, and my time has
23 passed now, Ray take me and Ray say, all right, come, I want
24 you to go see somebody.

25 So when I look, Anna Budd -- come Anna Budd start

C. Gibbon

1 to scope the federal law, tell me say, it's federal law,
2 you've got to take the drug test and this and that. Me say
3 to her, Ms. Budd, look, me say, I'm a law-abiding citizen,
4 man. Me say I'm a middle-age man and a policeman never put
5 handcuff on me, I never commit myself or anything. I say I
6 know that the drug test is a must, you've got to take the
7 test to go back to work, but I say I have a medical problem,
8 I say I have a prostate problem. Me say my doctor at HIP
9 told me that my prostate gland started swelling and I have
10 problem urinating, right. So it's not definitely my fault,
11 me say if I could fix the prostate, I would fix it and give
12 the urine right away.

13 So them say well, all right, you drive? I said
14 yes, I have a car. Him say well, I'm going to send you to my
15 doctor, my DOT doctor. I say where? Him say Westbury -- no,
16 Westchester. Me say Westchester? Me say I don't know
17 Westchester, you know.

18 Q. Before you get to that, so you were at 40 Worth
19 Street for a number of hours?

20 A. Yes.

21 Q. Were you able to urinate at all?

22 A. No, I don't urinate in 40 Worth Street at all. You
23 know when I urinate, I actually wet up myself, you know, at
24 Flushing station. After they send me from 40 Worth Street
25 and say I must go to Westchester, me park my car in a parking

C. Gibbon

1 lot, a Chinaman parking lot in Flushing, right off 41st
2 Avenue near the subway station, right. So me have to come
3 back now to get me car to drive to Westchester.

4 When I was leaving out of the DOT building now, Ray
5 Summer's was coming out, me say Ray, me feel like the urine
6 going to come out now give me another try, man, make me go
7 give you the urine. Ray say no, no, your time pass. Go on
8 and check the DOT doctor and let we know what's really wrong
9 with you. So me say Ray, me no tell you say me prostate
10 gland already swelling, that's why he can't get the urine.
11 Him say go on, go on. And me say all right.

12 On my job, any supervisor talk to me or give me an
13 order, I always go through with it, me is a very peaceful
14 guy, me don't give any problem or anything, so me leave
15 now --

16 Q. Mr. Gibbon, again, I just went to understand your
17 day. So you showed up at 40 Worth Street, you stated about
18 11:00 in the morning?

19 A. Yes.

20 Q. And what time did this person tell you to go to
21 Westchester, do you remember?

22 A. Well, it must be about 1:15 or 1:30 because I think
23 the drug test was for three hours from 11 until 1 and after
24 my session of the drug test was over, Ray went and call her,
25 and Anna Budd say and Ray Summer's -- when Anna Budd say I

C. Gibbon

1 must go to Westchester to the medical people.

2 Q. Did you go, were you supposed to go to Westchester
3 that same day?

4 A. Yes.

5 Q. Did you?

6 A. But I never find the spot. I tell them say I don't
7 know Westchester, right. Anna Budd say them would write down
8 the direction on a slip as plain as ever to give me. I take
9 the direction. I put it -- I drop the direction on the
10 passenger's side of the car and by driving me glance at it,
11 you know, and driving and I miss one turn. I messed up. I
12 can't forget man, me end up on Westchester Avenue what take
13 you straight under the train line, right. Now, the road was
14 so narrow and you have the wall on one side and how they call
15 it, like the Jersey borough is on one side.

16 Q. So did you turn around and go back to the place?

17 Did you find the doctor's office that day?

18 A. No, when I really get to find out where the doctor
19 is and I call the doctor office to let him know that I'm
20 still in Westchester, I will be there, right. When I call
21 the nurse tell me that, no, the doctor leave about 15 minutes
22 ago.

23 Q. What time was this?

24 A. That was about 10 past 5 or something like that,
25 I'm not sure.

C. Gibbon

1 Q. What did the nurse tell you to do?

2 A. The doctor gone for the day so the doctor wasn't
3 going to come back. So in my thinking now, I just say I got
4 to get back home now. So I leave Westchester heading back
5 for home. Now, they give me the direction to go, you know,
6 but they never give me the direction to come back. So on the
7 way now, go that way, I crossover and go on the other side to
8 get back in, right. But that was a very stupid thing because
9 I leave out of the Westchester in the evening about, say,
10 5:30, you know what time I reach home, I never reach home
11 until 1:15 the same day.

12 Q. Did you go back to the doctor in Westchester?

13 A. Yes, the following -- well, about 6:30 in the
14 morning now my phone ring, when I picked up --

15 Before that, the follow day now when I miss the
16 road, right, and I couldn't find the place, I call -- I take
17 up the phone and I call Ray Summer's. I called Ray. Her
18 phone just keep on ringing, ringing, ringing; nobody picked
19 it up.

20 When I turn back now and coming back in, I still
21 have the phone on my ears. You know, if a cop see you with a
22 phone on your ears, it's a charge. Me going this way, a cop
23 car was coming up here and I know the policeman see me with
24 the phone on me ears because he look. And me take the phone
25 and me throw it in the glove compartment and step on the gas

C. Gibbon

1 and just get out of the area.

2 Q. Mr. Gibbon, when did you get to the doctor, though?

3 A. The following day.

4 Q. At what time?

5 A. About 10, 10:30.

6 Q. What happened at the doctor's office?

7 A. Well, I went in --

8 Q. Had you been able to urinate between the night
9 before and the doctor's office?

10 A. No. No.

11 Q. So this was 24 hours of non-urination?

12 A. No. True, I'm going back now, right, and I think
13 that I'm going to do the drug test over there, I doesn't
14 urinate at all. I try hold it in. Right. When I go over
15 there and I did have problem for them to admit me because
16 they told me at 40 Worth Street that they set an appointment
17 with the doctor, for certain time I must be there, right,
18 because Ray Summer's tell me say, Clifton, if you doesn't
19 keep this appointment, you lose your job.

20 Q. This was the day before, though?

21 A. The day -- which day you're talking?

22 Q. February 17, 2006, the day you had the drug test at
23 40 Worth Street, they told you to go to the doctor that
24 afternoon, they made an appointment?

25 A. Yes.

C. Gibbon

1 A. Give me a form to fill out the form and me fill out
2 the form and she said the doctor will see you and me hand her
3 back the form and I wait about another hour-and-a-half and
4 then this doctor come.

5 Q. Do you remember the doctor's name?

6 A. Michelle Bonamassa.

7 Q. Do you remember about what time this was when you
8 saw the doctor?

9 A. No, tell you the truth, I don't really recall the
10 time because --

11 Q. Was it about noon?

12 A. Call it, say it's about -- about 12 or to 1:30,
13 within the time period. I don't remember the specific time.

14 Q. Then when you went in to see the doctor, what did
15 the doctor do to you?

16 A. Well, I was in the room and the doctor come in and
17 the doctor say what's wrong? I say well, doc, I'm working
18 for DOT and I went to do a drug test and to give them the
19 urine for them to test me with. Doc, my bowels is full with
20 the urine but the urine just wouldn't come out. She said all
21 right Clifton, take off your clothes, undress and go on the
22 table.

23 Well, the same test what that doctor give me is the
24 same test my doctor give me, right, so after she test me and
25 she said all right --

C. Gibbon

1 Q. What kind of test is that, it's a prostate test?

2 A. Yes, a prostate test.

3 Q. Did they take blood?

4 A. Yes, they take blood and I give them urine that
5 same day, too. The urine didn't take long, I had to wait
6 about two hours in the men's room to give them the urine, but
7 still I give them blood and I give them urine over there,
8 right.

9 And I said, Doc, what you see wrong with me? The
10 doctor say, Clifton, your prostate is swelling. I said, Doc,
11 it's serious to where I have to take an operation? The doc
12 say, No. He say, They have medication you can take to bring
13 the prostate to normal. So I said, Well, Doc, that's what my
14 doctor at HIP had tell me. I'm affiliated with HIP, my
15 doctor name Dr. Bharara, tell me that them have medication to
16 bring it down and me say, Doc, she give me Flomax tablets.
17 Doc say, yes, that's the tablets, just keep on taking that
18 tablets and everything will be all right.

19 And him say anyway, I want some blood from you and
20 I want some urine. I say, Doc, the urine, you can get the
21 urine, you know. But the blood -- me say the blood, you can
22 get the blood, you know, you can draw the blood, but the
23 urine, that's why you have me here. I said I don't sure if
24 the urine will come out. The doctor say, All right, Clifton,
25 go and try. I said, Okay, Doc. Me put on back on me clothes

C. Gibbon

1 and she draw the blood and me go in the bathroom.

2 Man, it's not a pretty nice thing, you know, your
3 bowel full with the urine, you really want to go but the
4 urine just wouldn't come out and me stand up in the bathroom
5 for about maybe hour-and-a-half, you know, at the bowl.

6 Q. At the doctor's office, you were in the bathroom
7 for about an-hour-and-a-half?

8 A. Yes, me stand up there long time. Me never time me
9 self but me just estimate it for about that and me stand up
10 at the bowl, man, with me dick out over the bowl with the cup
11 and the urine couldn't come out. It's sort of embarrassing,
12 you know, and the urine couldn't come out.

13 Q. So it was the -- like the same thing that happen
14 the day before?

15 A. Yes, at 40 Worth. So now me zip up back me self
16 now but me sort of leave me self free, you know, and relax
17 and as me going towards the door now, me feel like a little
18 something did come out, so me sort of ease up, soon me feel
19 me start to wet up me brief. So me just turn back now zip
20 back down me thing and take it out, it start to tip, just
21 tip, tip until it start to come out force. Me just stretch
22 out me hand and take up the cup off of the face basin and
23 fill up the cup.

24 If you see the amount what come out, man, it would
25 have filled the cup about six times, because the cup is about

C. Gibbon

1 that tall and me just empty the rest in the bowl and me carry
2 the urine and give the nurse it and the same time me give the
3 nurse it, me did want that doctor to call my doctor, Dr.
4 Bharara and them converse because them medical people. Me
5 give that doctor Dr. Bharara name and phone number when she
6 was with me and me give the nurse again, me write down
7 Dr. Bharara phone number and give the nurse and me say
8 remember, give the doctor that.

9 Me ask the nurse, are you finish with me now? The
10 nurse say yes. So me leave and me come out.

11 Q. Did you ever find out the results of what they
12 found?

13 A. That doctor say -- me never see the result, it's
14 Leonard Poletto (phonetic), the other lawyer, he got --

15 Q. Who?

16 MR. LICHTEN: Leonard Poletto, that is the
17 union lawyer.

18 A. Him get the report from Michelle Bonamassa but that
19 report it coincide with my doctor report at HIP, said that
20 the prostate gland was swelling a lot, that's why the urine
21 couldn't come out.

22 The only difference with my doctor report with
23 Michelle report, my doctor put in it say Clifton will have
24 problem in urinating. That doctor in that report, the doctor
25 never say me will have problem urinating, but my doctor put

C. Gibbon

1 in it in say I will have problem in urinating and I'm on
2 Flomax tablets.

3 BY MR. FRIEDMAN:

4 Q. Did you go back on to Flomax, did you refill your
5 prescription?

6 A. Yes, I refill me prescription because it's very
7 embarrassing, man.

8 Q. Do you remember when you refilled it?

9 A. On the 18th when I come over, my doctor say,
10 Clifton, come to the front desk. I will leave a prescription
11 for you. Well, from that time, me went and pick up --

12 Q. You said 18th, you mean 18th of February?

13 A. Yes, February.

14 Q. 2006?

15 A. 2006.

16 From that time me went and me pick up prescription
17 on the 18th when I come over, right. And me pharmacy is just
18 on Hillside, 169th. Me just come down there, fill the
19 prescription and me just start to take the tablets.

20 Q. Are you on Flomax now?

21 A. No, that is from 2006 and now it's 2008, man.

22 Q. Did you have a surgery or --

23 A. No, I don't have no surgery.

24 Q. So what happened to your prostate?

25 A. Well, I don't know. Well, now maybe it isn't

C. Gibbon

1 working that properly or good still because I don't check
2 back me doctor because when I leave -- when they stop me from
3 work they cut me medical, right. They cut everything because
4 for me to go and pick up -- to see the doctor now, I have to
5 pay \$94 just to see the doctor, right. And me have to pay
6 again to get me pressure pill, right. So I never go back and
7 see the doctor for him to check me for anything with the --
8 about me prostate.

9 Q. When was the last time that you ran out of Flomax
10 pills; do you understand?

11 A. It's in 2006, man, because from this case been
12 going on, right, me get three refill on the Flomax tablets,
13 right. And that time I wasn't in DOT. The reason why I
14 continue taking the Flomax at that time now, I was expecting
15 that they would call me back, because I say I don't see how
16 them can fire a person who really have a medical problem,
17 right. It's not really my fault I have something like that,
18 it's just the organ -- me prostate swelling.

19 Q. So you got a new Flomax prescription?

20 A. Yes.

21 Q. On February 18, 2006?

22 A. Yes.

23 Q. How long did those pills last until?

24 A. Well, really and truly me never really check the
25 day, you know.

C. Gibbon

1 Q. About?

2 A. About, whenever I have a full one hold about 28 or
3 29 or 30 tablets. I take one tablet a day.

4 Q. You said you had three refills?

5 A. I had three refills.

6 Q. So you were on Flomax for about three months?

7 A. After that, yes. I'm not sure, but you can
8 estimate it about that.

9 Q. Now, after you were done with the Flomax --

10 So that would be, one month would be to about March
11 18th, two months would be about April 18th and three months
12 would be about May 18th of 2006?

13 A. Yes.

14 Q. Did you get another prescription after that?

15 A. No, I never go back to her because --

16 Q. Because you were out of work?

17 A. Yes. I was definitely out of work and out of money
18 because they wouldn't see me because I have to pay for it.

19 Q. Now, after you ran out of the Flomax, did your
20 problems urinating come back?

21 A. Well, it come and goes, you know, because true,
22 now, you know, me don't have any demands to time me self to
23 two- or three-hour time me have to urinate, right. Me would
24 go to the bathroom, man, and me just go to urinate and if it
25 don't come, me just stand up and wait until it come.

C. Gibbon

1 Q. How long would you have to stand up and wait?

2 A. Sometime me go in there it just come, another time
3 it take about two minutes. Another time it takes about four
4 minutes but, you know, it never really affect me that way
5 because, you know, me know definitely doing it for a test or
6 anything like that, me just go in and just urinate just like
7 that.

8 Q. How would it affect your everyday life, were you
9 able to, you know, do everything you normally do?

10 A. Yes, it doesn't bother me, right. Because when I'm
11 on the job, right, out in the field cutting and me feel like
12 me want urinate, you know, you have to find a little place
13 where nobody can see you, me go and take out me, you know, to
14 urinate. It no come. Me just fix up back me self and me
15 just start work again. Me feel like me want go again, me go
16 hide again and it no come, me just put up back me -- and me
17 just go work again until eventually me go to go do it, it
18 just come. But when it come, it does come out, plenty just
19 come out one time. Fix up back me self and me gone. It
20 never affect me no time on me work, you know.

21 MR. FRIEDMAN: Off the record.

22 (Whereupon, an off-the-record discussion was
23 held.)

24 (Time noted: 11:57 a.m.)

25 MR. FRIEDMAN: Back on the record.

C. Gibbon

1 (Time noted: 12:09 p.m.)

2 BY MR. FRIEDMAN:

3 Q. Mr. Gibbon, before we go on with additional
4 questions, I just want to do a recap, we were kind of, you
5 know, we kind of got all over the place, I just want to have
6 a good timeline about February 17, 2006.

7 A. All right, go ahead.

8 Q. So you were notified to come in for a
9 pre-employment drug test?

10 A. Yes, first of the year; yes.

11 Q. You came in for the drug test at 40 Worth Street?

12 A. Right.

13 Q. At what time?

14 A. From 11 'til 1. I think it's about a three-hour
15 test, from 11 until 1.

16 Q. Then you testified that during that time period,
17 you were not able to urinate?

18 A. Right.

19 Q. They gave you -- you testified that you were given
20 water to drink?

21 A. I think, yes. I think it was four bottles of
22 water.

23 Q. You also testified that they gave you -- that you
24 were able to try and urinate whenever you felt the need to?

25 A. Right.

C. Gibbon

1 Q. Then you testified that after a number of hours,
2 they referred you to a medical center in Westchester?

3 A. Right.

4 Q. Was it two hours or three hours?

5 Were you at 40 Worth Street trying to urinate for
6 two hours or was it for three hours; do you recall?

7 A. It depends on the time the drug test, for instance,
8 if the drug test is from 11:00 until 1, that was the time
9 span that I was on to give them the urine.

10 Q. Was that the time span?

11 A. Yes, I think it was the time span, right, maybe
12 from 11 until 1:00, I couldn't really pass the urine because
13 the prostate was swelling, right.

14 Q. So at 1:00, you testified that you had not been
15 able to produce enough urine?

16 A. And I don't produce no urine whatsoever; none no
17 come.

18 Q. Then you testified that they said now you have to
19 go see the DOT doctor?

20 A. Right.

21 Q. And you testified they gave you directions to
22 Westchester to go that day?

23 A. Right.

24 Q. Then you testified that you drove to Westchester in
25 your own car?

C. Gibbon

1 I said, well, Doc, I called you yesterday about the tablets
2 because my tablets run out and I come now to take this drug
3 test and me say, Doc, the urine don't come out and she say,
4 All right, Clifton, come to the center. I will leave a
5 prescription at the front desk for you. So I went the same
6 day on the 18th when I reach back New York and I went and I
7 pick up the tablets.

8 Q. And that was for --

9 That was a prescription that had about 29 to 30
10 tablets in it and it was refillable three times?

11 A. Yes.

12 Q. And you eventually ran out of Flomax approximately
13 May of 2006?

14 A. Yes, about that time, about three months.

15 Q. You have not taken Flomax since that time?

16 A. No, because -- maybe. I don't sure. Maybe the
17 prostate problem is fix now. I don't know, because I never
18 go back to the doctor for the doctor to check me if the
19 prostate is still swelling but sometime I want to go, at
20 times not all the while, at times, you know, I take a little
21 time more.

22 Q. So the prostate problem is still there?

23 A. I don't sure. Maybe. I don't know for sure. A
24 doctor have to test me.

25 You understand?

C. Gibbon

1 Q. Okay. I understand.

2 Now, I just want to know when you went for the test
3 on February 17th, when you first went into 40 Worth Street,
4 did you request anything? Did you tell them, look, I have a
5 prostate problem? Did you say anything to them?

6 A. No, I never say anything to nobody at first until
7 when I went in to give the urine because I was sort of
8 certain that the urine could come out because I never had
9 that problem before and when the urine doesn't come out, when
10 they guy say your time is up. I went back and Ray was
11 sitting around the table just like you, and I went to her and
12 I say, Ray, it looks like I still have the problem, you know,
13 because the last time the problem I had with you, I was the
14 second person in the office and I was the last person leave.
15 I said, I seem like I have the same problem. And Ray say,
16 All right, try again Clifton and that was it.

17 Q. Now, did you tell --

18 Did you ever make a phone call or write a letter or
19 tell anybody at DOT that you had this problem?

20 A. No. You see because it was actually the end of the
21 year, you know, when they send me on this test, right. I
22 never tell anybody. I just went to me doctor. Me doctor
23 tell me and I keep it to me self, because normally I don't
24 even really know why I never tell anybody, mention it because
25 maybe if I did tell one of my supervisor in the yard or

C. Gibbon

1 somebody, them would definitely advise me and tell me what to
2 really do to prevent this problem that I'm in. So I sort of
3 keep it to me self, you know.

4 Q. When you went on February 17th for the drug test,
5 did you ask them for more time to urinate, did you ask them
6 for any sort of accommodation?

7 A. Well, in the last -- after the test over, right, me
8 feel like I was going to come, me said to Ray, me say, Ray, I
9 want to try again because me feel I would come now. Ray say,
10 You know what, go on, go on to the doctor and find out what
11 happened to you.

12 I always obey me supervisor or anybody who talk to
13 me. So me say, All right. Me just leave and me go to
14 Westchester.

15 Q. That was at the end of your time there, that was
16 after two or three hours?

17 A. Yes. Yes. After that.

18 Q. I just want to ask you about damages now. So I'm
19 going to ask you, you know, if you can tell me what sort of
20 damages you've suffered, loss of income, permanent damage to
21 your reputation.

22 I got a little ahead myself, to start off your
23 Complaint is that you're complaining that you're
24 discriminated against because of a disability?

25 A. Right.

C. Gibbon

1 Q. And your disability is what?

2 A. Swelling of the prostate. Slight swelling of the
3 prostate. The prostate is not bad, you know.

4 Q. So this slight swelling of your prostate, aside
5 from what you've already told us about the difficulty in
6 urination, is there anything else that it causes? Any other
7 problems that it causes you aside from what you've already
8 told us?

9 A. No, it just give me problems to pee sometimes,
10 that's it, nothing more.

11 Q. Now, what happened or what leads you to believe
12 that you were discriminated against because of your
13 disability?

14 A. Well, I was supposed to go back to work, right.
15 When I went -- I went to their doctor and my doctor then
16 confirmed it, right.

17 They say I refused from take the drug test, right.
18 I never refuse it, right. I tried to give them the urine but
19 the urine just wouldn't come out, right. So they say
20 Clifton, they say refusal from take the drug test, it come
21 back as a positive answer towards the drug test, right. So I
22 don't see how I can be charge for positive drug test wherein
23 I doesn't use drugs. They doesn't find any drugs in my
24 system, right, or anything like that. So how can I be fired
25 for that? And I really doesn't do it.